STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MEGAN BOSHAW, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

WALLACE LEE BOSHAW, JR.,

Respondent-Appellant,

and

BROOK ALISON BOSHAW,

Respondent.

UNPUBLISHED
September 20, 2007

No. 275464
Oakland Circuit Court
Family Division
LC No. 04-694800-NA

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Before: Borrello, P.J., and Jansen and Murray, JJ.

PER CURIAM.

In Docket No. 275464, respondent father appeals as of right an order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). In Docket No. 275465, respondent mother appeals as of right the same order, which terminated her parental rights to the child under the same statutory grounds. In both cases, we affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Once the lower court determines that a statutory ground for termination has been established, it "shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." MCL 712A.19b(5). See also *In re Trejo*, 462 Mich 341, 352-354; 612 NW2d 407 (2000). We review a decision terminating parental rights for clear error. MCR 3.977(J); *Trejo*, *supra* at 356. We "review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and . . . the court's decision regarding the child's best interest." *Trejo*, *supra* at 356-357.

Respondents both argue that the statutory grounds for terminating their parental rights were not established by clear and convincing evidence. The grounds under which the trial court terminated respondents' parental rights are:

> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
>
> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3).]

Respondents were married at one time, but are now divorced. At the time the petition was filed, respondent father had physical custody of the child. The child was initially removed from respondent father's home because of environmental neglect. According to the allegations in the petition, there were ten rabbits and three birds living in respondent father's home, and there was animal feces throughout the home. In addition, there was rotting garbage and food strewn throughout the home. Furthermore, the toilet in the minor child's bathroom was filthy, and the sink and surrounding area were filled with garbage. According to the petition, the family had a lengthy history with Child Protective Services (CPS), which consisted of CPS's investigation of neglect of the child in 1993, 1995, 1996, and 1997. Respondent father stipulated that these allegations in the petition were true. Although respondent mother did not so stipulate, she admitted at trial that CPS had investigated the family because of environmental neglect in 1993, 1995, 1996, and 1997, and that she had been provided services in the past. At the time the family court authorized the petition and temporarily removed the child from respondent father's home, respondent mother was unable to care for the child in her home, which was an apartment,

because there was not room for the child because of the number of people living in the apartment already.[1]

There was clear and convincing evidence to terminate respondents' rights to the child pursuant to MCL 712A.19b(3)(g). Evidence of a parent's inability to establish a suitable home for a child can establish neglect. *In re Harmon*, 140 Mich App 479, 483; 364 NW2d 354 (1985). When respondents were still married and living together, CPS investigated them four times for environmental neglect. Thus, respondents have a lengthy history of environmental neglect of the child, which began in 1993, when the child was approximately two years old. At the time respondents' rights were terminated, the child was fifteen years old, and the environmental neglect had not been abated. Respondent father was given ample time to rectify the unacceptable conditions in his home, but was unable to do so. Moreover, respondent mother, who testified that part of the reason she and respondent father were divorced was due to the poor conditions of the home that they shared, admitted that she had never seen respondent father's home. Even though the child did not physically reside with respondent mother, respondent mother still had an obligation to ensure the suitability of the home in which the child lived. She failed to do this. Furthermore, respondent mother was unable to secure suitable housing of her own. At one point, respondent mother had moved into a three-bedroom apartment, but because of the number of people living with her in the apartment, there was no room for the child. At the time of trial, respondent mother was unemployed and did not have her own housing. In light of the evidence, we find that there was clear and convincing evidence that both respondents were unable to provide proper care and custody for the child. Given that the child was fifteen when respondents' rights were terminated, and the environmental neglect had been a problem since she was two years old, there was no reasonable likelihood that either parent would be able to provide proper care and custody within a reasonable time considering the age of the child.

Because there was clear and convincing evidence to support the trial court's termination of respondents' parental rights under (g), we need not decide whether there was clear and convincing evidence under (j). Only one statutory ground is required to terminate parental rights. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

If the lower court finds that a statutory ground for termination has been established, it must terminate parental rights unless termination was clearly not in the child's best interests. MCL 712A.19b(5); *Trejo*, *supra* at 352-354. According to respondents, termination of their parental rights was not in the minor child's best interests. It is worth noting that the child herself expressed that she did not want to live with respondents. We do not doubt respondents' love for the child. However, both parties made choices that made it clear that the child was not a priority in their lives. Respondent father allowed his step-son, who was a registered sex offender, to move into his house and testified that he did not understand that it would be difficult to return the

[1] Respondent mother testified at trial that she was willing to take the child into her home at the time she was removed from respondent father's home, but that petitioner stated that the child could not be placed in her home at that time due to overcrowding in the home. Respondent mother was not present at the hearing in which the court removed the child from respondent father's home, but she was represented by counsel at that hearing.

child to the home when a registered sex offender was living there. In addition, respondent mother allowed her adult daughter to live in her apartment with the daughter's boyfriend and child, thus precluding the child from living in respondent mother's apartment due to a lack of space. Moreover, given the lengthy history of environmental neglect, which began when the child was two years old, and respondent father's inability to rectify the environmental neglect and respondent mother's inability to get herself into a position where she could offer suitable housing for the child, termination was in the best interests of the child. At fifteen years old, the best interests of the child demand the security of living in a safe and clean environment. Termination of respondents' parental rights was therefore in the child's best interests.

Respondent father argues that the trial court erred in failing to make findings of fact and conclusions of law in the order terminating his parental rights as required by MCR 3.977(H)(1). MCR 3.977(H)(1) requires a court, in terminating parental rights to a child, to "state on the record or in writing its findings of fact and conclusions of law." We have reviewed the transcript of the October 3, 2006, hearing in which the trial court determined that there was clear and convincing evidence to support terminating respondents' parental rights under MCL 712A.19b(3)(g) and (j), and we conclude that the court clearly made findings of fact and conclusions of law on the record. Thus, contrary to respondent father's argument, the trial court complied with MCR 3.977(H)(1).

Respondent mother argues that the trial court erred in denying her motion to dismiss the supplemental petition because she was not provided a copy of the case service plan. According to respondent mother, the failure to provide her with a copy of case service plan violates MCL 712A.18f(2). MCL 712A.18f(2) provides: "Before the court enters an order of disposition in a proceeding under section 2(b) of this chapter, the agency shall prepare a case service plan that shall be available to the court and all the parties to the proceeding." In the brief accompanying her motion to dismiss the supplemental petition, respondent mother quoted MCL 712A.18f in its entirety and then asserted broadly and without specifying which subsections of the statute had been violated that "the mandates of the relevant Court rule and statute have not been met." However, beyond quoting MCL 712A.18f in its entirety, respondent mother did not make a specific argument regarding MCL 712A.18f(2), and the trial court therefore did not decide or rule on the issue. Thus, this issue is not preserved for review. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999).

Respondent mother also argues that the trial court erred in denying her motion to dismiss the supplemental petition because she was not provided a copy of and did not sign the PAA. It does appear that a written PAA was not prepared for respondent mother, contrary to the instructions of the trial court. However, the trial court essentially established and articulated the requirements of respondent mother's PAA on the record at a hearing on October 28, 2004. Respondent mother was present at this hearing and was represented by counsel. In detailing the requirements of the PAA, the court even asked counsel for respondent mother if respondent mother wanted anything else in the PAA. Furthermore, the trial court issued an order of disposition dated November 3, 2004, which contained in writing the PAA as it pertained to both respondent mother and respondent father. Therefore, even if respondent mother did not sign a written PAA or have a copy of it, she was aware of the requirements because they were articulated on the record at a hearing for which respondent mother was present and represented by counsel and then were stated in writing in a dispositional order. Respondent mother also

acknowledged at trial that she understood that there were requirements imposed by the court for her to get the child back. We reject the suggestion that any failure on respondent mother's part to comply with the PAA was because respondent mother was unaware of the requirements in the PAA. To the contrary, respondent mother alone was responsible for her failure to comply with the PAA.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Christopher M. Murray